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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CARLO VERBERG ET AL

Serial No.: 09/832,119

Group Art Unit: 3643

Examiner: Thomas Price

Filed: July 15, 2003

For: A METHOD OF COOLING ANIMALS

Docket No.: 8553/210

**RESPONSE TO RESTRICTION REQUIREMENT**

To the Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is in response to the Official Action of January 31, 2006 which is, in substance, an amendment to the Official Action of October 3, 2005 that imposed a Restriction Requirement. To the extent that the Response to the Restriction Requirement of October 3, 2005 corresponds to the Restriction Requirement of January 31, 2006, it is incorporated by reference herein. Both Official Actions imposed a Restriction Requirement under 35 U.S.C. §121 to one of the following groups of claims:

Group I - Claims 85-92 drawn to a milking compartment classified in Class 119, Subclass 516; or

Group II - Claims 93-104 drawn to a cooling device classified in Class 119, Subclass 14.03.

In the prior Response to the Restriction Requirement, Applicants elected the Group I claims with traverse, particularly as to Claims 93-97 directed to a species IIA in the Group 8553/210

II claims. It was previously stated, inter alia, that the concept of limiting the cooling water to the back of the animal, and wherein the wetting area comprises water that is between hairs of the animal so there are substantially no unevenly long droplets on the wetted area as set forth in Claims 86 and 93 are important. Such election with traverse is continued herein.

The Restriction Requirement of January 31, 2006 requires a further election of species if Applicants elect the Group I claims as they have.

The further election is directed to the following:

Species IA as claimed in Claim 90;

Species IB as claimed in Claim 91; or

Species IC as claimed in Claim 92.

Applicants provisionally elect Species IA as claimed in Claim 90. This election is made, however, with traverse.

Each of Claims 90, 91, 92 are dependent upon a further dependent claim, to wit, Claim 89 which is in turn dependent on independent Claim 85.

Dependent Claim 89 adds to Claim 85: "means for determining whether said animal is undergoing thermal stress."

In Claim 90, which is dependent on Claim 89, the means for determining thermal stress comprises a camera.

In Claim 91, also dependent on Claim 89, the means for determining thermal stress comprises a hydrometer.

Finally, in Claim 92, also dependent on Claim 89, the means for determining thermal stress comprises an odor meter.

It will also be noted that in the non-elected claims of Group II, Claims 96 and 102 are Markush claims wherein the means for determining thermal stress consists of a camera, or a

hydrometer or an odor meter, or any combination thereof. In dependent Claim 103, the camera is stated to be an infrared camera.

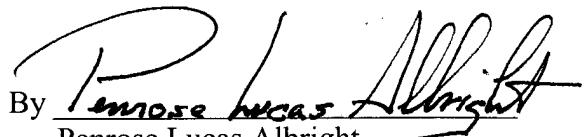
The Restriction Requirement as added by the Official Action of January 31, 2006 relating to Claims 90, 91 and 92 is flawed.

Each patent claim must be considered as patentably distinct from all other patent claims in the same patent irrespective of whether they are independent or dependent claims. Moreover, even where Markush claims are involved, such claims may be considered patentable as to some but not necessarily all of the named elements. In the present status of the Application, the elements of Claims 90, 91 and 92 are not, *per se*, essential distinguishing features of the combination of Claims 85 or 89. Accordingly, a Restriction Requirement should not be made even though the subcombinations of Claims 90, 91 and 92 may have separate utility. Moreover, the Restriction Requirement could, in any event, be overcome by an appropriately worded Markush claim or claims.

In summary, Applicants provisionally elect the Group I claims, including Claim 90 therein, for prosecution with traverse, whereby withdrawal of the Restriction Requirement is respectfully solicited.

Respectfully submitted,

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